Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
26 June 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 637/2014*, **

Communication submitted by:	Danil Gabdulkhakov (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	25 July 2014 (initial submission)
Date of present decision:	17 May 2018
Subject matters:	Torture by police officers; lack of prompt and impartial investigation; use in court of confessions obtained under duress
Procedural issues:	Admissibility — lack of substantiation; other international procedure
Substantive issues:	Torture; prompt and impartial investigation; forced confession
Articles of the Convention:	1, 2, 4, 12, 13, 15 and 16

1. The complainant is Danil Gabdulkhakov, a national of the Russian Federation of Bashkir origin, born in 1982. He claims that the Russian Federation has violated his rights under articles 2, 4, 12, 13, 15 and 16 of the Convention. The complainant is not represented by counsel.

The facts as presented by the complainant

2.1 On 22 September 2007, the complainant, his wife and two friends were arrested on suspicion, inter alia, of preparation of a terrorist attack, participation in an unlawful armed group and the murder of police officers. In the process of the arrest, the complainant and the others were forced to undress. The arrest was filmed and broadcast on television few days later. In the police car, on the way to the Department of Internal Affairs in Ponomarevka, Orenburg oblast, the complainant, who was handcuffed, was beaten by the police officers, was made to sit in a painful position and was subjected to threats of death

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Honghong Zhang. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Bakhtiyar Tuzmukhamedov did not participate in the consideration of the communication.

and sexual violence against himself and his wife. The complainant's relatives were not informed of his detention. His mother found out about his arrest from a television programme broadcast on 24 or 25 September 2007.

2.2 Later on 22 September 2007, in the temporary detention facility of the Department of Internal Affairs in Ponomarevka, the complainant was beaten with rubber batons and received kicks with boots. He claims that his ribs were broken, because he felt sharp pain and could not breathe without pain. After the beatings, he spent approximately two hours naked on a cold floor with his hands behind his back, forced to keep his chin up. On the same day, he underwent a medical examination, which recorded numerous bruises on his body. After the examination, still naked, he was questioned and beaten again.

2.3 On 25 September 2007, the complainant was transferred to the city police department in Ufa, for interrogation. During his transfer, which took between three and four hours, he was constantly beaten. A bag was put on his head, which prevented him from breathing normally. The complainant had no clothes on, with the exception of light trousers, and was suffering from the cold. Police officers stopped the car several times, forced him to get down on his knees and held a gun to his head to force him to confess guilt for crimes.

2.4 During his detention at the temporary detention facility in the city police department in Ufa, the complainant was subjected to physical ill-treatment on a daily basis. He was also beaten and tortured while being transported on 28 September and 2 October 2007. During one interrogation, the police officers hit his head against the table and his nose started bleeding. He was forced to write a note to the effect that he had hit his nose by accident in his detention cell.

2.5 On 2 October 2007, the complainant was placed in a small cell measuring 0.5 m^2. After he had lost consciousness, the police officers called an ambulance. He was diagnosed with arterial hypertension, which he had not been suffering from previously. Having received first aid, the complainant remained in the cell until the next day. He received no food or water and could not go to the toilet.

2.6 On 4 October 2007, the complainant was transferred to pretrial detention facility (SIZO) No. 1 in Ufa. On the same day, he underwent a medical check-up, which recorded only an abrasion on his nose. He alleges that his cellmates there systematically beat him, in an attempt to force him to confess guilt. He attempted to commit suicide by opening up his veins. He was frequently placed in solitary confinement for periods of several days, with no food and no sanitary facilities.

2.7 From 9 to 16 November 2007, the complainant was again transferred to the temporary detention facility in the city police department in Ufa. Because of constant violence and psychological pressure, the complainant confessed guilt on six occasions between 22 September and 11 December 2007. A State-appointed counsel was present during his questioning but did not react to the beatings and did not provide him with advice.

2.8 On 21 January 2011, in a jury trial before the Supreme Court of the Republic of Bashkortostan, the complainant was found guilty of several crimes and sentenced to life imprisonment. In court, the complainant and his lawyers repeatedly raised the issue of torture and forced confession during the pretrial detention. However, the presiding judge did not allow the jury to hear that information. On the other hand, all statements given by the complainant at the pretrial stage were provided to the jury. The complainant then submitted a cassation appeal to the Supreme Court of the Russian Federation, which was rejected on 31 July 2012. In November 2013, the complainant submitted a request for a supervisory review to the Supreme Court of the Russian Federation, which was rejected on 29 November 2013.

2.9 On 26 October 2007, the investigative department in Ufa received information from SIZO No. 1 about the complainant's injuries. After an investigation, the investigative department decided on 5 November 2007 not to open criminal proceedings. The decision was based on the complainant's own request for the investigation to be closed, in which he wrote that he had hit his nose against the bed in his cell by accident. The decision of 5 November 2007 was quashed by a superior investigator on 22 October 2012 and referred back for additional investigation. On an unspecified date, the complainant appealed against

the investigative department's decision dated 5 November 2007 to October District Court in Ufa. On 23 October 2012, the court dismissed the complainant's appeal because the decision in question had already been quashed by the superior investigator. On 31 January 2013, the Supreme Court of the Republic of Bashkortostan upheld the decision of October District Court. On 5 August 2013 and on 26 February 2014, the complainant's cassation review appeals were rejected by the Supreme Court of the Republic of Bashkortostan and by the Supreme Court of the Russian Federation, respectively.

2.10 Further decisions not to open criminal proceedings were taken by the investigative department in Ufa on 1 November 2012, 25 August 2013, 25 September 2013 and 19 December 2013. They were all quashed by superior investigators and were sent for further investigation on 15 August 2013, 15 September 2013 and 19 November 2013. On 29 August 2013, October District Court, similarly, dismissed the complainant's appeal concerning the prosecutor's decision of 1 November 2012 not to open criminal proceedings. The complainant's appeal was rejected by the Supreme Court of Bashkortostan on 18 December 2013.

2.11 On 30 January and 22 July 2013, the complainant submitted complaints to the European Court of Human Rights. On 26 September 2013 and 23 January 2014, respectively, the European Court of Human Rights found the complaint inadmissible by a single-judge decision under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights).

2.12 On 24 February 2015, the complainant asked the Committee to issue temporary protection measures to prevent his transfer to correctional facility No. 18 for people sentenced to life imprisonment, which is located in the village of Kharp in the Yamalo-Nenets Autonomous Area. According to the complainant, the facility was well known for torturing prisoners and inducing them to commit suicide if they did not cooperate with the administration by providing false witness statements for criminal investigations or confessing guilt in unresolved crimes. The complainant also alleged, without providing further details, that he and his family were under pressure to withdraw the complaint submitted to the Committee. On 24 March 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to make sure that no reprisals were taken against the complainant and his family, witnesses and representatives as a result of the submission of the communication and that they were protected during the period of consideration of the communication by the Committee.

The complaint

3.1 The complainant claims that he was subjected to torture and inhuman, cruel and degrading treatment for several months, contrary to article 2 of the Convention.

3.2 The complainant also claims that the State party failed to undertake any prompt and impartial investigation regarding the acts of torture, contrary to article 12 of the Convention.

3.3 The complainant further claims that all his attempts to have criminal proceedings initiated were unsuccessful and that his confessions obtained under duress were retained as evidence by the courts in violation of articles 13 and 15 of the Convention.

3.4 The complainant maintains that the State party not only failed to prevent him from being tortured, but even encouraged such treatment, by broadcasting a recording of his arrest on one of the national television channels, which showed him and his wife naked and in an inhuman and degrading condition, contrary to articles 4 and 16 of the Convention.

State party's observations on admissibility

4.1 On 10 March 2015, the State party observed that the communication should be considered inadmissible under article 22 (5) (a) of the Convention because the complainant had already applied, concerning the same facts, to the European Court of Human Rights (applications Nos. 10236/13 and 52225/13).

4.2 The State party adds that the complainant was initially detained from 4 October 2007 to 15 September 2012, and then from 27 June 2013 until the date of the State party's submission, in SIZO No. 1 in Ufa. During those periods, the material conditions of

detention of the complainant and the medical care provided in the facility were in line with the requirements of the relevant national legislation. The complainant was not subjected to coercion, special measures or disciplinary sanctions during his detention.

Complainant's comments on the State party's observations on admissibility

5.1 On 5 August 2015, the complainant informed the Committee that the European Court of Human Rights had found his applications inadmissible on procedural grounds, without considering them in substance. Thus, his submission should thus be declared admissible in accordance with article 22 (5) (a) of the Convention.

5.2 The complainant submits that his original submission to the Committee concerned ill-treatment by the police to extract forced confessions at the investigation stage of his criminal case, and that the State party's observations on the conditions of detention in SIZO No. 1 are therefore irrelevant to the case.

State party's observations on the merits

6.1 On 22 June 2017, the State party submitted its observations on the merits of the case. It recalls that the complainant was arrested on 22 September 2007 at 7 a.m. at a crime scene. He made no complaints at the time of arrest. He was searched in the presence of two witnesses and signed the arrest record without complaints or remarks. His parents were duly informed about the arrest. As it transpired from the arrest documentation, there was an exchange of gunfire between the suspects and the police, and the complainant may have received bodily injuries during the process of arrest.

6.2 The complainant underwent a medical examination on 22 September 2007, at the Department of Internal Affairs in Ponomarevka, in the presence of two witnesses. The following injuries were recorded on that occasion: a purple-bluish bruise on the lower eyelid of his left eye, measuring 3 x 2 cm; an abrasion with a brownish sunken lower layer of unclear shape on the left side of his forehead, measuring 1 cm^2; and purple-bluish bruises measuring between 25 x 10 cm and 3 x 2 cm, on the back, in the middle third of the left shoulder, in the middle third of the left thigh and on the dorsum of the left foot.

6.3 On 22 September 2007, the complainant was interrogated as a suspect, in the presence of a lawyer, N. He stated that there had been a shooting during the arrest and that he had wounded a police officer in the leg. Both the complainant and his lawyer signed the arrest record, without making any observations or objections. On 23 September 2007, the complainant was interrogated as an accused person, in the presence of the same lawyer. He gave similar statements and signed the record without making any complaints.

6.4 The complainant confirmed his statements on 11 December 2007, when presented with the final charges. The record was again signed by him and his lawyer and no complaints were made.

6.5 The criminal case materials show that neither the complainant nor his representatives reported beatings and torture until February 2009. On 11 February 2009, the parents of the accused persons submitted a claim to the Supreme Court of Bashkortostan regarding inadmissibility of the statements of the co-accused, including the complainant, as the statements had allegedly been made under torture, during the arrest and in detention. Similar complaints were then filed with other authorities in April 2009. No complaints were made by the complainant at the stage of the pretrial investigation.

6.6 On 13 April 2009, in the absence of the jury, the accused were questioned on the allegations of torture. They refused to answer the questions of the prosecutor. The court found that the complainant's injuries had been inflicted by the police during the arrest because of the armed resistance to the police by the complainant and his co-accused. The court decided to retain as evidence the initial statements of the complainant given at the pretrial stage.

6.7 According to the answer from the prosecutor's office in Bashkortostan to the complainant's mother, dated 3 April 2009, during the arrest the complainant and the rest of the group were ordered to remove their clothes on account of security considerations, in order to guarantee the safety of the police officers and prevent the possibility of a terrorist

attack. The clothes were taken as evidence in the criminal case and the arrested persons received other clothing. It is stated in the record of personal belongings prepared at the Department of Internal Affairs in Ponomarevka that the complainant was wearing socks and underpants. The complainant did not file any complaints relating to being left without clothing. According to the record of the alcohol and drug test carried out shortly after his arrest, the complainant was dressed untidily. There was no mention of him being naked.

6.8 In view of the above-mentioned considerations, the State party denies any violation of the complainant's rights.

Complainant's comments on the State party's observations on the merits

7.1 On 30 September 2017, the complainant noted that, contrary to the information provided by the State party, he had been arrested at night and not at 7 a.m. on 22 September 2007. His mother had not been informed and had found out about his arrest from a television programme. Shooting between those being arrested and the police was not confirmed by the jury. He and the other three persons did not resist arrest. The medical report of 22 September 2007 fully confirms the complainant's allegations of beating. However it lists only external injuries, and does not mention internal injuries such as concussion, broken ribs, and damage to kidneys and tendons. The lawyer present at the interrogations did not provide any help or advice to the complainant, which is confirmed by the video recording of the interrogation.

7.2 According to the complainant, the State party's observation that his complaint concerning beatings and torture was not submitted until February 2009 is incorrect. A series of investigations was carried out, starting from 2007. Moreover, at the pretrial stage, the complainant was under the control of the police officers and was unable to complain. He signed the police records also while under the full control of the police officers. That is why the first thorough complaint, containing the details about the ill-treatment, was submitted at the trial stage only.

7.3 During the trial, the accused refused to answer the questions of the prosecutor, who was interested in proving them guilty. They wanted to tell the jury about the torture and were willing to answer the jury's questions, but the presiding judge did not allow it. The initial statements of the complainant were found admissible by the presiding judge, but not by the jury, whose members did not know the manner in which the statements had been obtained.

7.4 Following the arrest, the complainant was naked. That fact is confirmed by the video recording of the arrest, which was broadcast on television. He received clothing piece by piece only, in the Department of Internal Affairs in Ponomarevka. For the medical examination that took place after he had been beaten all night and the following morning, the complainant was given underpants and socks because there were witnesses present. At the initial interrogation the complainant was undressed, which is also evidenced by the video recording.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee must ascertain that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes the State party's observation that there were two complaints by the complainant before the European Court of Human Rights. The Committee notes in this regard that both complaints were found inadmissible by a single-judge decision and were not examined on the merits, and that no specific reason for inadmissibility was listed, other than the explanation that the applications did not meet the requirements of articles 34 and 35 of the European Convention on Human Rights. The Committee thus finds that, in the circumstances, it is not precluded under article 22 (5) (a) of the Convention from examining the communication.

8.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. In this respect, the Committee notes that the complainant did not make his claims under articles 4 and 16 of the Convention, concerning the broadcasting of his arrest on national television, in the domestic courts, and finds this part of the communication inadmissible under article 22 (5) (b) of the Convention.

8.3 The Committee finds the remaining part of the communication, which raises issues under articles 1, 2 (1), 12, 13 and 15 of the Convention, sufficiently substantiated for the purposes of admissibility, and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 The Committee notes the complainant's claim that he was tortured, inter alia by beating, exposure to cold, and threats against himself and his wife, on a daily basis and for several months, from the time of his arrest, to make him confess guilt for crimes. Among the documents made available to the Committee is medical certificate No. 679, dated 22 September 2007, which was issued by a forensic medical expert. This certificate lists numerous bruises around the complainant's body, which were apparently caused by solid blunt objects several hours before the examination. The certificate also states that the injuries recorded could not have been caused by shooting from firearms. On the basis of the information before it, the Committee concludes that the abuse to which the complainant was subjected was perpetrated by officials of the State party with the aim of obtaining a confession of guilt, and that the acts in question constitute acts of torture within the meaning of article 1 of the Convention.[1]

9.3 The Committee notes the State party's argument that the injuries mentioned were inflicted during the process of arrest as a result of the complainant and others opening fire and resisting arrest. The State party has not submitted any documents to support that claim. The Committee notes the complainant's counterargument that they gave in without resisting and that the jury at the trial found that the allegation of armed resistance was not proven. The Committee notes that the complainant had already spent at least a few hours in police detention before his injuries were registered in the medical examination held on 22 September 2007. In that regard, the Committee recalls that States parties are under a special obligation to take effective measures to prevent torture[2] and ensure that persons deprived of their liberty can exercise the rights enshrined in the Convention, since they bear a special responsibility owing to the extent of the control that prison authorities exercise over such persons.[3] In the absence of solid evidence from the State party that the injuries were not caused while the complainant was under the control of the police officers, the Committee finds that there has been a violation of article 2 (1), read in conjunction with article 1, of the Convention.

9.4 In this context, the Committee observes that nothing in the State party's observations indicates that there has been an investigation into the origin of the complainant's injuries reported in the medical certificate dated 22 September 2007. It therefore finds a violation of article 12 of the Convention.

9.5 The Committee notes the complainant's claim under article 13 of the Convention that he could not effectively initiate criminal proceedings against the police officers who tortured him. In this regard, the Committee observes that although the investigation, which began in 2007, was not initiated by the complainant, he did appeal on several occasions against the refusals of the investigative department in Ufa to open criminal proceedings in the case. The Committee notes that the decisions of the investigative department were

[1] See, inter alia, *Asfari v. Morocco* (CAT/C/59/D/606/2014), para. 13.2; *Jaïdane v. Tunisia* (CAT/C/61/D/654/2015), para. 7.4; and *Ndagijimana v. Burundi* (CAT/C/62/D/496/2012 and CAT/C/62/D/496/2012/Corr.1), para. 8.2.

[2] See the Committee's general comment No. 2 (2007) on the implementation of article 2, para. 13.

[3] See *Guerrero Larez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4.

based on the complainant's own explanation that the abrasion on his nose was the result of an accident, and on his request to have the investigation closed. The Committee notes that there is no indication that the investigative department actually questioned the complainant in person at any point, in particular given that his statements were written in detention and under the control of the police officers who allegedly inflicted the said injury. The Committee also notes that the complainant could not appeal effectively against the decisions of the investigative department in the courts, because each time the decisions were quashed and were sent for further investigation by superior officers. Nevertheless, each subsequent investigation reflected almost identically the findings of the previous one. All the above observations tend to demonstrate that the complainant's case was not promptly and impartially examined by the domestic authorities. Accordingly, the Committee finds that the facts as presented reveal a violation of article 13 of the Convention in the present case.

9.6 The Committee notes the complainant's claim that his self-incriminatory statements given under torture were retained as a valid evidence by the courts. In this regard, the Committee notes that during one of the hearings in the first instance proceedings, the prosecutor mentioned that the investigations into the complainant's allegations of torture did not confirm such allegations. Without further clarifying information on file, the Committee assumes that the court must have taken the findings of the investigative authorities as fact and proceeded to treat the statements of the complainant as admissible evidence. The Committee notes, however, that the only investigation mentioned by the parties in their submissions is the one initiated in 2007. It concerned only the abrasion that the complainant had on his nose, reported in the SIZO medical report dated 5 October 2007. The investigation documents do not mention any of the other injuries reported in the medical certificate dated 22 September 2007. The Committee recalls that the general nature of the provisions of article 15 derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in proceedings under its jurisdiction were not made under torture.[4] The Committee notes that the court did not address either the complainant's claims about spending many hours in the cold without proper clothing, or his fear for his wife who was also undressed and constantly threatened with sexual violence. In the light of the above, the Committee concludes that the Supreme Court of the Republic of Bashkortostan, acting as a trial court, failed to assess thoroughly the complainant's claims that his self-incriminatory statements were extracted under torture before presenting them as evidence to the jury. Thus, the Committee finds a violation of article 15 of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a violation by the State party of articles 2 (1) read in conjunction with article 1, 12, 13 and 15 of the Convention.

11. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to provide the complainant with an effective remedy, including: (a) conducting an impartial investigation into the complainant's allegations, with a view to the prosecution, trial and punishment of anyone found to be responsible for acts of torture — this investigation should include a medical examination of the complainant, in accordance with the Istanbul Protocol; (b) providing the complainant with a retrial, in accordance with the principle laid out in article 15 of the Convention; (c) providing the complainant with redress and the means of rehabilitation for the acts of torture committed; and (d) preventing the recurrence of any such violations in the future. The Committee urges the State party to inform it, within 90 days of the date of transmittal of the present decision, of the measures it has taken in response to the above findings.

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[4] See *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.7; *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.8; and *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.3.